



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/157777

PRELIMINARY RECITALS

Pursuant to a petition filed May 19, 2014, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Waukesha County Health and Human Services in regard to FoodShare benefits (FS), a hearing was held on June 17, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the agency correctly instituted a tax intercept.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Lynnal Boyeal

Waukesha County Health and Human Services
514 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On April 17, 2013 the agency sent Petitioner a Notification of FoodShare Overissuance, claim number [REDACTED], asserting a \$411.00 overpayment for the period of September 21, 2012 through January 31, 2013. (Exhibit 5)
3. On December 3, 2013 the agency sent Petitioner a repayment agreement. (Exhibit 5)

4. On February 4, 2014 the agency sent Petitioner a dunning notice reminding her about the \$411 overpayment that she needed to repay. (Exhibit 2)
5. On March 4, 2014 the agency sent Petitioner a second dunning notice. (Exhibit 2)
6. On April 2, 2014 the agency sent Petitioner a third dunning notice. (Exhibit 2)
7. On May 16, 2014 the agency sent Petitioner a notice, indicating that it may intercept any tax refund to which she might be entitled to satisfy the \$401 balance of the \$411 overpayment of FoodShare benefits. (Exhibit 1)
8. On that same date the agency sent Petitioner a notice indicating that it would be intercepting any federal tax refunds or payments to which she might be entitled to satisfy the remaining \$401.00 debt. (Exhibit 1)
9. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on May 21, 2014. (Exhibit 1)
10. The petitioner previously filed an appeal challenging the underlying overpayment. She voluntarily withdrew that appeal on January 27, 2014, prior to the Administrative Law Judge (ALJ) holding a hearing. (Exhibit 3).

DISCUSSION

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

A Notification of FoodShare Overissuance, a FoodShare Overissuance Worksheet and a repayment agreement must be issued to the household/recipient. *FoodShare Wisconsin Handbook*, §7.3.1.8. If the recipient does not make a payment or misses a payment, a dunning notice must be issued. *Id.*

The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices and the debt must be:

1. Valid and legally enforceable.
2. State: All error types
Federal: All error types.
3. State: At least \$20;
Federal: At least \$25.
4. State: At least 30 days from notification of Overissuance;
Federal: Not more than 10 years past due from notification date except in fraud cases. There is no delinquency period for fraud.
5. Free from any current appeals.
6. Incurred by someone who has not filed bankruptcy, nor has their spouse.

FoodShare Wisconsin Handbook §7.3.2.10 Tax Intercept

Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general

relief benefits, overissuance of FS, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department of Health Services must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... **may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.**

Emphasis added

A party has 30-days from the date of the letter/notice of tax intercept to file an appeal. Wis. Stat., §49.85(3)(a)2; FSH §7.3.2.11 In this case, the date of the notice was May 16, 2014, and division of hearings and appeals received the petitioner's request for fair hearing on May 21, 2014. This is within the 30 day window, and the petitioner's appeal is timely with regard to the tax intercept issue.

At a hearing concerning the use of a tax intercept to collect a FoodShare Overissuance, appeal of the determination of FoodShare overissuance is not allowed, pursuant to Wis. Stat., §49.85(4)(b), because Petitioner had a prior right to appeal the determination. The hearing is specifically limited to the tax intercept and whether or not the State agency correctly used the tax intercept. *Id.*

At the hearing, Petitioner indicated that she believed that she was unfairly targeted by the agency. The petitioner believes that the overpayment was the fault of the agency and that the agency combed through her case specifically looking for any little issue. The petitioner does not dispute the overpayment except to indicate that it is "their [referring to the agency's] fault." (Exhibit 1). Further, the petitioner originally appealed the overpayment, but voluntarily withdrew that appeal back in January 2014. (Exhibit 3). Even if this was the proper forum to contest the underlying overpayment, an appeal on that issue would be untimely.

There is no dispute that the use of tax intercept was proper in this case. The petitioner received three or more dunning notices, the debt was valid and legally enforceable, the debt was over both the State and federal threshold amount for a tax intercept, the debt is within State and Federal time limits for collecting, is free from any appeal, and the Petitioner has not filed for bankruptcy.

CONCLUSIONS OF LAW

The agency correctly implemented a tax intercept.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative

Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 8th day of July, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 8, 2014.

Waukesha County Health and Human Services
Public Assistance Collection Unit